



MINNEAPOLIS  
PUBLIC SCHOOLS  
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807 NE Broadway  
Minneapolis, Minnesota 55413-2398

October 31, 2011

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: Appeal for Review for USAC SLD Notification of Commitment Adjustment Letter dated April 28, 2011:

Funding Year:	2006
Applicant Name:	Minneapolis School District 1
Billed Entity Number:	133625
Form 471 Application Number:	517640
Funding Request Number(s):	1433440
CC Docket Nos.:	96-45 and 02-6
Form Identifier	Y9 TeleCom
FCC registration Number	0013056601
SPIN Name:	Nextel West Corp.

Contact: Mr. Grant Lindberg  
Authorized Erate Principal  
Minneapolis School District 1  
807 Broadway St. N.E.  
Minneapolis, MN 55413  
Phone: (612) 668-0281  
Fax: (612) 668-0275  
Email: grant.lindberg@mpls.k12.mn.us

Minneapolis School District 1 (MPS) respectfully submits this letter as MPS's Request for Review to the Federal Communications Commission (FCC) requesting the FCC review the Schools and Libraries Division of the Universal Service Administrative Company denial of Funding Request Number 1433440 for Nextel cellular services.

The District understand and supports the FCC directive to assure service providers are given an open, competitive process that results in competitive prices for services and the spending of public funds in a prudent and appropriate manner. The District will demonstrate in this Request for Review that the substantive process established by the District related to Funding Request Number 1433440, did indeed provide an open, competitive process which resulted in public funds being spent in a prudent and appropriate manner. The SLD denied Funding Request Number 1433440 because the RFP posted by the District was available to potential vendors for 16 days rather than 28 days. No other violations were found. Significantly, the SLD made no findings that the

RFP posting and process followed by MPS did not result in competitive prices and the prudent expenditure of public funds. No such substantive negative findings were made because the process did result in fair competition among vendors, competitive prices and the prudent expenditure of public funds.

MPS did have an open, fair and competitive RFP for cellular service. In the beginning, MPS originally looked at the State Contract, but discovered that the award contract date would have expired by June of that year. A valid extension was planned by the State of Minnesota, but MPS was concerned the date for signature would be outside the Erate Day 1 time period. In order to provide an open and fair process resulting in competitive prices for MPS, MPS took the additional precaution to post an RFP and sent the posting to all known cell phone service providers. A timeline of events follows.

Attachment 1 to this Letter of Appeal is a copy of the Commitment Adjustment Report for 471 application number 517640 which is reference material for the following appeal:

1. When MPS began the process of selecting a vendor for cellular services, it first completed the required form 470. At this time, MPS's intent was to obtain, review and compare competitive vendor responses against the existing State of Minnesota cellular phone contract, which had already been competitively bid. The 470 was completed with all contract options available on the 470 at that time; month to month and seeking a contract. (Later that year, the 470s included additional check boxes for multiyear contracts.) In other words, MPS was asking for all contracting options available at that time.
2. MPS did not receive any responses in the first week after posting the 470. Past experiences with 470 postings has demonstrated that most responses occur within the first few days after posting. In fact, MPS never received any inquiry or submission from the 470 posting throughout the 470 to 471 process.
3. Upon a thorough review, MPS determined that the Minnesota State Contract was a repackaging of the Western States Contracting Alliance (WSCA) contract, and at the time, MPS could not be assured that a full and proper competitive bidding process was used to select vendors for the WSCA contract. Further, MPS was informed that the contract would be renewed prior to the Erate deadlines. MPS was legitimately concerned since the State of Minnesota cooperative contract had not been extended by January 1. This concern was proven valid when the contract was not extended until after the Erate deadline.
4. Because MPS is committed to use the utmost diligence to assure compliance with the required competitive bidding process in order to obtain competitive pricing for public dollars, it decided to issue an RFP. The RFP issued by MPS was specific to the detailed cellular service required. It was not an RFP requesting pricing of any and every possible service available for Erate coverage.
5. MPS's competitive bidding process requires postings in addition to the Erate 470 online notifications. MPS advertised the RFP for two weeks in the *Finance and Commerce*, an official newspaper for Minneapolis and the common procedure for notification to vendors seeking public sector business in Minnesota. MPS also posted another 470 as a note to alert vendors that an RFP was available. This

allowed the greatest visibility to ensure all potential competitors were notified of MPS's request for responses.

6. Additionally, MPS actively solicited responses by researching all cellular providers and sending them the RFP. The list of vendors is the second attachment to this document. The list is virtually all cellular providers in the State of Minnesota, and included all the major providers. When one of the service providers requested additional time to respond, the RFP was extended for an additional two days to ensure robust competition. No other vendor called and inquired about the RFP or requested additional time. All vendors who intended on responding to the RFP, did submit their responses.
7. After receiving responses, MPS developed an evaluation system. Because it was an RFP that requested specific services, MPS was able to fully compare all the responses. MPS then ranked the responses, with cost being the highest weight factor. As a result, MPS selected Nextel- Sprint. A copy of the RFP can be provided if wanted. In an ironic twist, though after the allotted time frame, Nextel-Sprint was also the awarded vendor for the State of Minnesota cooperative contract.

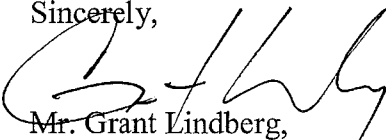
The SLD determined that the above outlined process was insufficient, not because the process wasn't open, fair or competitive, not because it didn't result in a competitive pricing, not because it didn't result in the prudent expenditure of public funds, rather, the SLD determined that even though MPS obtained competitive pricing of a specific cellular service in an open, fair and thorough process, because the RFP was posted for only 16 days rather than 28 days, MPS must be stripped of over \$300,000.00 in Erate funding it received in 2006 and relied upon. As discussed in the timeline above, MPS's RFP was sent to nearly all Minnesota cellular providers, and all major suppliers. MPS provided the RFP to them directly in addition to the postings, and in addition to the updated 470. NO responses from the 470 were received. One provider did request additional time, and the RFP was extended to ensure all competitive responses would be received. No other inquiries or requests from providers were made. Every possible eligible cellular provider had the opportunity to provide a response.

MPS takes seriously the expenditure of public funds. It wants to and did ensure that cost-effectiveness was the foremost factor in selecting a provider for specific, bona fide, cellular service. The FCC has opined that its "mandate is to ensure that the statutory goals of section 254 are met without waste, fraud, and abuse." This quote is from the FCC's decision In the Matter of Request for Review of the Decision of the USAC by Ysleta Independent School District, SLD No. 321479, et. al., FCC 03-313. In that matter, the various school districts cast out the widest net request for services, from which no true competition was afforded, and the prudent expenditure of public funds did not occur. Of interest, the FCC noted that "[a]lthough aspects of particular approaches utilized by individual applicants may, taken out of context, appear not to constitute a significant violation of our rules, the practices in each of the [cases] weaken, undercut, or even subvert the Commissions' competitive bidding requirements." In the Matter of Request for Review of the Decision of the USAC by Ysleta Independent School District, SLD No. 321479, et. al., FCC 03-313, page 31.

The FCC certainly has the power and authority to ensure strict compliance with the rules in requiring that RFP's be posted for a full 28 days. But the FCC also has the power and authority to waive a rule "where the particular facts make strict compliance inconsistent with the public interest." In the Matter of Request for Review of the Decision of the USAC by Ysleta Independent School District, SLD No. 321479, et. al., FCC 03-313, page 31. As has been demonstrated, MPS has substantially and substantively complied with the requirement that all Erate services be obtained in an open, fair and competitive process. MPS put out a request for specific cellular services, MPS received multiple responses from which it could and did conduct a thorough review to compare prices and services, and in the end, selected the best price and service for MPS. An additional twelve days of posting would not have provided any more responses, or any more competition. The end result would have been the same. Penalizing MPS in the amount of over \$300,000.00 is an unnecessary and harsh result when the result was, in fact, the prudent expenditure of public funds.

As requested, MPS has kept this appeal Request for Review brief. MPS is prepared, and welcomes the Commission's direct contact with MPS to discuss its process in more detail. MPS sincerely appreciates the Commission's time and review of this matter.

Sincerely,



Mr. Grant Lindberg,  
Authorized Erate Principal  
Minneapolis, School District 1

Attachment 1: Commitment Adjustment Report for 471 Application #517640

Attachment 2: Cellular Providers Solicited

Received

MAY 03 2011



Plant Maintenance  
Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

April 28, 2011

Grant Lindberg  
MINNEAPOLIS SCHOOL DISTRICT 1  
807 NE BROADWAY  
MINNEAPOLIS, MN 55413

RECEIVED  
MAY 03 2011  
FACILITIES

Re: Form 471 Application Number:	517640
Funding Year:	2006
Applicant's Form Identifier:	Y9 Telecom
Billed Entity Number:	133625
FCC Registration Number:	0013056601
SPIN:	143000893
Service Provider Name:	Nextel West Corp
Service Provider Contact Person:	Christina Halley

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981  
Visit us online at: [www.usac.org/sl](http://www.usac.org/sl)



TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

## FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Christina Halley  
Nextel West Corp

Funding Commitment Adjustment Report for  
Form 471 Application Number: 517640

Funding Request Number:	1433440
Services Ordered:	TELCOMM SERVICES
SPIN:	143000893
Service Provider Name:	Nextel West Corp
Contract Number:	MPS 05-02
Billing Account Number:	257983318
Site Identifier:	133625
Original Funding Commitment:	\$147,544.04
Commitment Adjustment Amount:	\$147,544.04
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$134,886.61
Funds to be Recovered from Applicant:	\$134,886.61

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2005 FCC Form 470 # 655210000525741 you stated that you would not be issuing a request for proposal and you did not indicate that you were looking for a multi year contract. During the course of review it was determined that you did issue a request for proposal. A copy was supplied by you during the review process which indicated that you were seeking a one year contract with 3- 1 year extensions. Also, you provided a copy of a one year contract which contained a clause allowing for 3-one year extensions. The FCC rules require that the applicant submits a "bona fide" request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to provide detailed and specific information of the services sought and prevented the potential bidders from formulating their bids you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant



**Attachment 2: Cellular Providers Solicited.**

Cingular Wireless  
Erik Perschmann  
4300 Market Pointe Drive  
Bloomington, MN 55435

Sprint PCS Wireless  
7585 France Ave. S.  
Edina, MN 55435

Qwest Wireless  
Rusty Smith  
600 Stinson Blvd.  
Minneapolis, MN 55413

T-Mobile  
Pat Ponzio  
8000 West 78<sup>th</sup> Street  
# 400  
Edina, MN 55439

Nextel Communications  
Marc Meeden  
7700 France Avenue S.  
# 400S  
Edina, MN 55435

Verizon Wireless  
Jeff Olmscheid  
505 N. Highway 169  
Plymouth, MN 55441

Metrocall Wireless  
Steve Warkmack  
6121 Baker Road, # 103  
Minnetonka, MN 55345

WorldWide Wireless  
Kelly VanBaren  
2708 Highway 88  
St. Anthony, MN 55418